IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

WP(C).No. 9496 of 2007(E)

PETITIONER:

HILLWOOD IMPORTS & EXPORTS (P)LIMITED,
CHUNGAM, CALICUT BY V.SHERIFF,
MANAGING DIRECTOR.

BY ADV. SRI.PREMJIT NAGENDRAN

RESPONDENTS:
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1. **ASST.COMMISSIONER (KVAT),**
   COMMERCIAL TAXES, SPECIAL CIRCLE II,
   CALICUT.

2. **INTELLIGENCE OFFICER (IB),**
   COMMERCIAL TAXES, KOLLAM.

3. **COMMERCIAL TAX INSPECTOR,**
   COMMERCIAL TAX CHECK POST, B.MANJESHWAR.

BY SR.GOVT.PLEADER SRI. MOHAMMED RAFIQ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.9496/2007 E

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF RR NOTICE ISSUED BY FIRST RESPONDENT DTD. 12/02/2007.**

EXT.P2: **COPY OF ORDER IN WP(C) NO.8221 DTD. 12/03/2007.**

EXT.P3: **COPY OF NOTICE ISSUED BY THE THIRD RESPONDENT U/S 47(4).**

EXT.P4: **COPY OF REPLY DTD. 15/02/2007 FILED TO EXT.P3 NOTICE.**

/TRUE COPY/

KSS

K.BALAKRISHNAN NAIR, J.

W.P.(C).No.9496 of 2007-E

Dated this the 21st day of March, 2007

JUDGMENT

The petitioner challenges Ext.P3 notice issued under Section 47 (4) of the Kerala Value Added Tax Act, 2003 detaining 7 timber logs imported by it. The vehicle carrying the consignment belongs to a third party. But, the goods belongs to the petitioner who is stated to be a defaulter. But, the petitioner submits, action under Sec.47 (4) cannot be taken against it for the reason that the amounts due are those payable under the K.G.S.T. Act. Even assuming that action under the above provision can be invoked the maximum amount that could be demanded is the tax payable in relation to the goods detained, it is submitted.

2. I heard the learned Government Pleader for the respondents.

3. Section 47 (4) of the Kerala Value Added Tax Act, 2003 reads as follows:

> "If such officer has reason to believe that the tax exigible on the sale or purchase of goods under transport is not paid, or the dealer whose goods are transported is in default of payment of any tax or other amount due under this Act for any period, such officer may, not withstanding anything to the contrary contained in this Act or the rules made thereunder allow the goods to be transported after realising the tax in respect of the goods transported. If the driver or the person in charge of the goods or the dealer whose goods are under transport refuses to pay such tax, the goods shall be detained by such officer and shall be dealt with in the manner provided in this section as if the transport of goods

were an attempt to evade payment of tax due under this Act."

4. Going by the above provision, I feel that the maximum amount that could be demanded for release of goods is the tax payable in relation to the goods detained. In view of the above position, the third respondent is directed to release the goods detained under Ext.P2 after realising the tax payable for the goods detained, on production of a copy of this judgment. If the vehicle belongs to the third party, the same shall not be detained.

The Writ Petition is disposed of as above.

K.BALAKRISHNAN NAIR, JUDGE.

MS